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INTERSTATE INTERPLEADER UNDER THE FEDERAL ACT OF 1936

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A BANK admits its liability on the deposit of a decedent, which is claimed, however, both by the executor of the estate and the possessor of the passbook under an alleged gift *causa mortis*. If the executor and the holder of the passbook both bring actions to recover the amount of the deposit, the bank suffers the unjust inconvenience and vexation of two lawsuits for one liability. Furthermore, it is not unlikely that both juries may find against the bank, thereby charging it with a double recovery.[1]

The purpose of the equitable remedy of interpleader is to avoid, first, injustice to such a defendant as well as, second, the possibility of further suits between such claimants. By interpleading both claimants to the fund in the same proceeding, the bank is permitted to withdraw entirely, and the fund is left in court to be awarded to the winner of the dispute between claimants. The device, long established in equity jurisprudence, is one which appeals strongly to the sense of reason and justice.[2]

Where executor and passbook holder are residents of different states, the problem is complicated by that ubiq-

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[1] Mutual Life Insurance Co. v. McGrew, 188 U. S. 291, 47 L. Ed. 480 (1903). For other cases of unjust double recovery, see Chafee, "Interstate Interpleader," 33 Yale L. J. 685, 718 (1924).

[2] See Chafee, "Modernizing Interpleader," 30 Yale L. J. 815 (1921).

uitous ogre, "Jurisdiction."[3] If the bank applies for relief in the home state of the executor, he may find the court powerless to bind the holder of the passbook; conversely, if suit is brought in the state of the latter. Where the object of the controversy is a chattel or other res, personal jurisdiction over the non-resident claimant is not necessary and his rights may be determined after service by publication and notice. Most often, however, the res is a debt, and in such a case it is more difficult to sustain jurisdiction in rem. The Supreme Court of the United States finally decided, in *New York Life Insurance Company* v. *Dunlevy,*[4] that jurisdiction over the debtor does not confer jurisdiction in rem and that a judgment of interpleader in such a case without personal service upon a non-resident claimant is not entitled to full faith and credit.

Business, however, gives scant heed to political boundaries; and interstate transactions, breeding countless situations which demand a convenient method of interstate interpleader, multiply rapidly. The foregoing example represents only one of many types of situations creating the same need. The solution is one for Congress; state legislatures have no authority to extend the jurisdiction of their courts extraterritorially, while Congress may readily give the district courts nationwide jurisdiction.[5]

Furthermore, the system of interpleader practiced in the United States courts is a flexible one, free from the strict formal requirements which hamper litigants in some of the state tribunals.[6] Thus, soon after the decision of the Dunlevy case, the insurance companies, whose business is one of the most prolific sources of situations calling for interstate interpleader, obtained Federal leg-

[3] Chafee, supra note 1, p. 697.
[4] 241 U. S. 519, 60 L. Ed. 1140 (1916).
[5] United States v. Union Pacific Ry. Co., 98 U. S. 569, 25 L. Ed. 143 (1879).
[6] Chafee, "Interpleader in United States Courts," 41 Yale L. J. 1134, 1137 (1932).

islation to that end.[7] Though highly successful,[8] the act which was passed was extremely limited in usefulness by narrow restriction on the stakeholders to whom it was available. Amended in the 1925[9] and in 1926,[10] it has now been supplanted by an act which attempts to provide a simple and adequate system of interpleader for the benefit of any stakeholder threatened by the claims of citizens of different states.[11]

The purpose of this article is to discuss some of the problems arising under the act of 1936 and to comment on the various provisions of the act. Recent cases displaying the efficacy of the act and suggesting new uses of the expedient procedure it provides have been collected and are here called to the attention of the reader.[12]

The Federal Interpleader Act of 1936

Where the benefits of the 1917 act were available only to "casualty companies, surety or insurance companies, or fraternal or beneficial associations," the present act[13]

[7] 39 Stat. 929 (1917).

[8] Chafee, supra note 6, p. 1164; see also Chafee, "Federal Interpleader Act of 1936," 45 Yale L. J. 963 (1936), at p. 965.

[9] 43 Stat. 976 (1925).

[10] 44 Stat. 416 (1926).

[11] Infra note 13.

[12] For an earlier discussion of the Act written soon after its passage, see Chafee, "The Federal Interpleader Act of 1936," 45 Yale L. J. 963 and 1161.

[13] U. S. C. A., Tit. 28, § 41, subd. (26).

"(26) *Original jurisdiction of bills of interpleader, and of bills in the nature of interpleader.* (a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified, filed by any person, firm, corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of the value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if—

(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligation; and

(ii) The complainant (a) has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court; or (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge

contemplates bills filed by "any person, firm, corporation, association, or society." Thus, individuals and corporations generally are entitled to the remedy where they are threatened with claims by several claimants of different states. Consistent with this broadened scope, the act extends relief to the applicant which has issued a "note," "certificate," "or other instrument," or which is "under any obligation written or unwritten to the amount of $500 or more." It is not necessary that the res be claimed in any particular form, that is, the cash surrender value of an insurance policy may be sought by one, while another claimant seeks to have the policy kept alive, for claims "to any one or more of the benefits arising by virtue of any note . . . [or] policy" are included.

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may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

(c) Notwithstanding any provision of Part I of this title to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same.

(e) In any action at law in a United States District Court against any person, firm, corporation, association, or society, such defendant may set up by way of equitable defense, in accordance with section 398 of this title, any matter which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States District Court against the plaintiff in such action at law and one or more other adverse claimants, under the provisions of paragraph (a) of this subsection or any other provision of Part I of this title and the rules of court made pursuant thereto. The defendant may join as parties to such equitable defense any claimant or claimants who are not already parties to such action at law. The district court in which such equitable defense is interposed shall thereby possess the powers conferred upon district courts by paragraphs (c) and (d) of this subsection and by section 398 of this title."

Under the earlier legislation the applicant was required to deposit the res in court before he could secure a dismissal; this was extremely clumsy in such a case as that cited where the claimants seek different dispositions of the policy. Accordingly, it is now provided that the applicant may have the alternative of giving bond with proper surety rather than depositing the res. The lowered jurisdictional amount of $500 is maintained in the act.

The act retains the provision regarding process and injunctions with only minor changes in wording. The court is expressly empowered to issue its process for all claimants and to issue an injunction against each of them "enjoining them from instituting or prosecuting any suit or proceeding in any state court or in any United States court on account of such money or property. . . . " No provision is made, however, for the compulsory attendance of witnesses, and the general disability of the courts to compel the appearance of a witness from a distance of more than one hundred miles extends to interpleader suits.

In the usual two-sided case the process of the court does not extend beyond the geographical limits of the district in which the court sits, and the rights of a party can usually only be determined by the court in the district where he resides. If he submits to the jurisdiction of the court in another district, he does so voluntarily and may be said to assume the responsibility of procuring his witnesses. With the process of the courts given nationwide force, however, the claimant in interpleader may be taken away from his home district against his will. In such a case, unjust hardship may result if he cannot bring his witnesses with him. A possible safeguard would be to permit the court in this class of cases to compel the appearance of witnesses from any distance. To avoid injustice to the witness, who has no interest in the outcome of the suit, his appearance ought to be compelled only

upon a showing to the court that his presence is necessary to the party's case and will aid in the determination of a vital issue, and that a deposition will not adequately serve the need. Experience alone will indicate the need or lack of it for such an amendment to the Act.

JURISDICTION

The jurisdiction of the district courts is extended to bills of interpleader where "two or more adverse claimants, citizens of different states, are claiming to be entitled to such money or property. . . ."[14] No mention is made in the act of the citizenship of the applicant, and it is plain that Congress meant it to be immaterial; the criterion for jurisdiction is the diversity of citizenship among claimants. Thus co-citizenship between the applicant and a claimant would not affect the jurisdiction of the court. Where some of the claimants are co-citizens, however, the problem is less open. If there are only two claimants, co-citizenship between them would be fatal apparently, but where only two of a larger number of claimants are co-citizens the meaning is not plain. Grammatically, it would seem that the phrase, "citizens of different states," should modify not only "two" but "two or more" and that therefore each claimant must be of a different state from every other claimant. That this construction cannot prevail, however, appears from the express words of paragraph (b), relating to venue.[15] It is there provided that the suit shall be brought in the district "in which one *or more* of such claimants resides or reside," indicating that Congress contemplated suits where some of the claimants were from the same state. If, then, the citizenship of the applicant is immaterial and only partial diversity among claimants is required, the act of 1936 thus embraces suits begun by bills of interpleader even where the applicant and two or more claim-

[14] Supra note 13.
[15] Supra note 13.

ants are of the same state, so long as the disputed fund is claimed by a single out-of-state party.

This broad construction accords with the purpose of the act—to provide an adequate remedy in those situations in which the state courts are powerless to give relief.[16] For whenever a stakeholder is harassed by adverse claimaints of whom any is of a different state from the others, there is need for the extended arm of the United States courts to cross state lines. To limit the courts more narrowly would be to leave a gap where the stakeholder would be, if not completely helpless, at least at the mercy of the mere chance that the foreign claimant might voluntarily submit to the jurisdiction of a state court in order to expedite his own affairs.

Assuming that Congress intended as indicated, there remains the possibility of constitutional difficulties. As in any other class of cases, it is necessary in interpleader that there be some constitutional grounds for the jurisdiction of the Federal courts. Congress can confer jurisdiction upon them only within the ambit of its constitutional authority; and if the construction is broader than the constitutional language granting jurisdiction over "controversies between citizens of different states," it may result in the fall of the statute, at least to the extent that it exceeds those bounds.

The limits of that constitutional clause have never been defined, and the Supreme Court has never held that Congress could not confer jurisdiction even in the most extreme case of a suit wherein only one of many coparties is a citizen of a different state from any one of the others. However, in *Strawbridge* v. *Curtiss*,[17] the

[16] See report of the Senate Judiciary Committee, Senate Report 660, serial 6899, volume 3, first session 64th Congress, 1915-16:

"The bill seeks to cure an evil. The evil is the inability of the holder of the fund, which is claimed by adverse claimants, who reside in different states, to obtain proper relief in a tribunal having jurisdiction over all such claimants. Under the present judicial system, there is no such tribunal, and therefore, no relief to the holder of such funds."

[17] 7 U. S. 159, 3 Cranch 267, 2 L. Ed. 435 (1806).

Supreme Court decided that the then existing judiciary act, in terms almost identical to the constitutional language,[18] required complete diversity between adverse parties, that is, that every plaintiff must be of a different state from every defendant. This limitation has been remorselessly followed[19] until it seems fundamental, despite the fact that it has never been ascribed to the Constitution. Its rigor has been somewhat lessened by the practice of the courts in ignoring unnecessary parties for the purpose of establishing diversity of citizenship.[20] And the alignment of the parties in the pleadings may also be altered to determine for purposes of jurisdiction whether there is diversity between adverse parties in interest.[21] More important is the doctrine of separable controversies,[22] by which a suit in which there is a separable controversy wholly between citizens of different states may be removed to the Federal courts, for it was held in *Barney* v. *Latham*[23] that not only the separable controversy but the entire suit is removable.

Interpleader presents a unique situation in this respect. It consists of two distinct stages, in either of which may be waged a most bitter battle. In the first stage the applicant seeks the order of interpleader and may be strenuously opposed by either or both claimants. In the second stage, the applicant has usually dropped out and the fight between claimants is on.

Prior to the first interpleader legislation it was held in *Turman Oil Company* v. *Lathrop*[24] that complete diversity between the parties to the "preliminary controversy" over the order of interpleader was sufficient basis for the jurisdiction of the court and the suit was per-

[18] The statute read "the suit is between a citizen of the state where the suit is brought, and a citizen of another state."
[19] Dobie, Federal Procedure (1928), § 67.
[20] Geer v. Mathieson Alkali Works, 190 U. S. 428, 47 L. Ed. 1122 (1903); see Dobie, supra note 19, § 68.
[21] The Removal Cases, 100 U. S. 457, 25 L. Ed. 593 (1879).
[22] Dobie, supra note 19, § 95.
[23] 103 U. S. 205, 26 L. Ed. 514 (1881).
[24] 8 F. Supp. 870 (D. Okl., 1934).

mitted where the applicant was an Ohio corporation and all of the claimants were Oklahoma citizens. Contrasted with this case is the dictum of Judge Bledsoe in *Mutual Life Insurance Company* v. *Lott*,[25] which involved a bill framed under the first interpleader legislation: "The controversy here is not between the insurance company and the claimants. If so, the court obviously would be without jurisdiction because some of the claimants are citizens of New York, of the same state of which the plaintiff itself is a citizen. Disregarding the formal and looking to the substantial alignment of the parties . . . the real and seemingly only controversy in the case is between claimants." These views seem mutually inconsistent, though each is supported by other cases.[26]

By regarding the interpleader suit as made up of two separable controversies, one the first stage of the case and another between the claimants *inter sese* in the second stage, the inconsistency may be dissipated. So regarded, the existence of complete diversity as to either controversy would be sufficient foundation for jurisdiction over the whole case under *Barney* v. *Latham*. This harmonization gains strength from the fact that the courts have apparently vacillated between the two stages as to which is the "real controversy," indicating that each has great significance, if not "separability." The reason for the failure of the courts to spin this theory[27] is historical. For the Lott case, first to establish the jurisdiction of the Federal court based on diversity among claimants, was decided under the first interpleader legislation, which expressly provided for suits so framed. Prior to that time the Turman Oil case had

[25] 275 F. 365, 372 (D. Cal., 1921).

[26] In connection with Turman Oil Co. case, see Knickerbocker Trust Co. v. City of Kalamazoo, 182 F. 865 (1910). See also Penn Mutual Life Insurance Co. v. Meguire, 13 F. Supp. 967 (1936) following the Lott case.

[27] It was held in Mutual Life Insurance Co. v. Allen, 134 Mass. 289 (1883), that interpleader does not involve separable controversies, but the court considered only the possibility of separating the controversy between the applicant and one claimant from that between the applicant and other claimants.

stood as law and no cases had suggested the possibility of basing jurisdiction on diversity among claimants. There was thus no need to resort to the separable controversy doctrine in the Lott case, since the statute was prima facie justification for the apparent about-face and no constitutional issue was raised.

However, in both the foregoing cases the necessity for complete diversity of citizenship at one stage of the case or the other was assumed. This has already been pointed out as to the Turman Oil case; in *Mutual Life Insurance Company* v. *Lott* the court finally dismissed the case for want of jurisdiction because there was not complete diversity among claimants, one being a citizen of the District of Columbia. Disregarding for the moment the special question of the status of the District of Columbia citizen,[28] it is plain that the construction of the present act already herein suggested would permit jurisdiction in the situation of the Lott case, there being partial diversity among the claimants. That case assumed the necessity for complete diversity within the controversy under the applicable legislation; but it did not go so far as to hold that the Constitution required it. It has been argued by one writer[29] that the court will not follow the philosophy of *Strawbridge* v. *Curtiss* to the extent of holding that Congress cannot constitutionally extend the jurisdiction of the courts to the case of partial diversity. The constitutional language permitting jurisdiction over "controversies between citizens of different states" is at least grammatically satisfied if one party to the controversy is of a different state from another.[30]

[28] The Lott case, following a line of Supreme Court decisions, held that a resident of the District of Columbia is not a citizen of a state, within the meaning of the Constitution and his presence as a necessary party defeated the necessary complete diversity. Thus a resident of the District of Columbia could only be brought in if some basis for jurisdiction exists aside from his residence. Under the construction here urged for the 1936 act, he could be brought in if there were other claimants, citizens of different states.

[29] Chafee, supra note 6, p. 1165.

[30] Justice Bradley, concurring in the Removal cases, supra note 22, said, "A controversy is such [between citizens of different states], as that ex-

And the strict construction placed on similar statutory language by *Strawbridge* v. *Curtiss* need not bind the court in interpreting the Constitution. The practical considerations definitely favor the broad construction of the Constitution.

The demonstrated need for the jurisdiction conferred by the act of 1936 is strong reason for a constitution broad enough to embrace it. This need does not exist in the ordinary two-sided case where the parties may be heard in the state courts, and the likelihood of jealousies where two concurrent systems operate is ample justification for strictly confining the jurisdiction of one. Without violence to language or reason, it is submitted that the court may continue to construe narrowly the judicial code generally as requiring complete diversity as to "suits between citizens of different states" and as to parties to "separable controversies" in the removal statute, while here construing the Constitution to permit what Congress plainly intended, that is, jurisdiction based upon partial diversity of citizenship among claimants.

But if the requirement of complete diversity be held a constitutional limitation, it may nevertheless be possible to sustain jurisdiction despite partial co-citizenship among claimants where within the case there is a separable controversy wholly between citizens of different states.[31] If, among claimants A, B, and C, there is a separable controversy in which A opposes B and C, and A is from one state and B and C from another, then there is complete diversity as to that controversy and

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pression is used in the Constitution and in the law, when any of the parties on one side thereof are citizens of a different State or States, from that of which any of the parties on the other side are citizens. . . . In other words, a controversy may be, at the same time, both a controversy between citizens of the same State and between citizens of different States."

[31] In Ackerman v. Tobin, 22 F. (2d) 541 (C. C. A. 8th, 1927) decided under the Act of 1927, a suit was permitted where the applicant was a co-citizen of the claimants and there was only partial diversity among claimants. The court did not discuss the issue, however, and the case stands only as an implicit assumption that the statute is not limited by Strawbridge v. Curtiss.

jurisdiction over the whole case would be supported by the doctrine of *Barney* v. *Latham.*

In the usual tort or contract case involving a separable controversy the inquiry into the question of separability is guided by whether the liability sought to be enforced is joint, whether a judgment against the non-resident defendant will affect the resident; if so, the removal is not permitted. Thus, in *Louisville & Nashville Railroad Company* v. *Ide,*[32] individual defendants were not permitted to remove where several carriers made the contract of transportation upon which suit was brought despite the presence of separate defenses. But in *Barney* v. *Latham,* where heirs claimed the ancestor's interest in land held by a corporation and also an accounting of money received by other defendants in the same transaction, the individual defendants were permitted to remove on the theory that the land company was not a necessary party to the dispute between the heirs and the non-resident defendants. The requirement that the controversy be independent from the rest of the suit is not relaxed though the whole case is removable and the independent controversy is not actually separated; the inquiry is thus hypothetical and seemingly serves only to bring the case within the words of the removal statute, which require that the controversy be determinable independently of the other parties to the suit.[33]

In the three-cornered fight among claimants in the case of interpleader, there is always a controversy between each claimant and the others. This follows from the familiar equitable doctrine that the claims must be mutually exclusive; A cannot interplead his butcher and baker simply because he owes each $50. The success of any claimant thus involves the defeat of the others, and each claimant will be aligned against the others as to the validity of his claim. If any claimant is a non-resident

[32] 114 U. S. 52, 5 S. Ct. 735, 29 L. Ed. 63 (1885).
[33] See Note, 36 Col. L. Rev. 794 (1936).

of the state in which the others live, then there is a controversy wholly between citizens of different states since the validity of his claim is contested by citizens of another state. Whether this controversy is separable is the troublesome question; it plainly is not independent in the sense that a judgment for or against one claimant will not affect the others, and the contract cases are not helped. All claimants are grasping for the same disputed fund and the success of one will affect the others inevitably; this characteristic unity of the interpleader case forecasts a holding of non-separability.

However, a few cases permit removal where the object of the suit is a res, and the disputes among claimants in interpleader may be analogous. Thus, in a suit to quiet title, defendants not claiming under a common source were permitted to remove,[34] and in a suit on an assigned claim one assignee defendant was permitted to remove on the basis of a controversy with the plaintiff as to the relative priority of their assignments.[35] While it is to be noted that in the first case the separable controversies were all between the plaintiff and various defendants, that is, between stakeholder and claimants, and in the latter case the controversy was between two claimants to the same fund, the cases nevertheless stand for the proposition that several adverse claims to a res present separable controversies. In view of the freedom with which the courts rearrange parties according to interest,[36] it is not unlikely that the holding of these cases will be applied in the interpleader cases.

The early cases under the 1936 act construe the act as requiring diversity of citizenship among claimants, though not complete diversity. In *Worcester County*

[34] Carothers v. McKinley Mining and Smelting Co., 116 F. 947 (Nev., 1902); McMullen v. Halleck Cattle Co., 193 F. 282 (1910); Connell v. Smiley, 156 U. S. 335, 39 L. Ed. 443 (1895).

[35] Salem Trust Co. v. Manufacturers' Finance Co., 264 U. S. 182, 68 L. Ed. 629 (1923).

[36] Supra note 20.

Trust Company v. *Long*,[37] jurisdiction was taken over a bill of interpleader where the stakeholder was a co-citizen of several claimants; the co-citizenship of some of the claimants did not affect the jurisdiction of the court in that case. Likewise, it is to be noted that the citizenship of the stakeholder is immaterial. In the Worcester case, the co-citizenship of the stakeholder did not affect the jurisdiction of the court adversely; and in *Eagle, Starr & British Dominions* v. *Tadlock*,[38] it was held conversely that where all of the claimants to the fund were co-citizens, the complainant's alienage could not supply the absent jurisdictional factor required by the act.

The constitutional issue has not been raised and the validity of the act has been assumed. Since it is difficult to state a case in which the act would create hardship because of its jurisdictional provisions, it is likely that litigants will have no motive for attacking it and the issue will remain quiescent. The cases do, however, crystallize the interpretation urged, namely, that partial diversity among claimants is a sufficient, but absolute, prerequisite to an original bill under the act.

Is the Present Act Exclusive?

The Eagle, Starr & British Dominions case immediately raises the question as to whether the present act of 1936 is exclusive, that is, whether it precludes the framing of interpleader bills under traditional equity jurisdiction. The Eagle case expressly disapproves the Turman Oil case, decided before the earliest Federal Interpleader Statute, which permitted suits framed under traditional equity jurisdiction on the basis of diversity of citizenship between the stakeholder and claimants. In dismissing the case for want of jurisdiction, the court further declined to follow the doctrine of the Turman Oil case. It

[37] 14 F. Supp. 754 (Mass., 1936).
[38] 14 F. Supp. 933 (Cal., 1936).

held that the present act is exclusive and that such an interpretation would allow one form of interpleader under general equity principles based upon diversity of citizenship as between stakeholder and claimant and another form under the statutes in cases involving diversity of citizenship among claimants with a jurisdictional minimum of $3,000 in the former and $500 in the latter, a result which the court regarded as not within the intention of Congress. It was never contended that the earlier and restricted acts were exclusive; they were palpably otherwise.[39]

The present act contains no language which might be construed as depriving the courts of their general equity jurisdiction over bills of interpleader. It does, however, have very nearly universal applicability, and some reason exists for the view of the California court that Congress did not intend to permit the existence of two very different methods of interpleader. The only situation not covered by the broad jurisdictional provisions of the present act is that of the Turman Oil case, where all claimants are co-citizens with an out-of-state stakeholder. To such a stakeholder the only advantage in being able to frame his bill under the 1936 act would be the availability of the liberal method employed by that act, for in such a case he would be able to interplead all claimants in their state courts. The expressed purpose of the Federal act[40] would not demand the inclusion of such a bill, whatever real practical advantage might be gained thereby; and the holding seems correct. The case has no nationwide binding effect, however, and other jurisdictions may not share the view of the California court, which permits interpleader suits framed according to traditional equity doctrines, under the general diversity

[39] In Penn Mutual Life Insurance Co. v. Meguire, supra note 26, the Turman case was followed despite the presence of the Act of 1917 and the suit was permitted though all claimants were from the same state. See also Connecticut General Life Insurance Co. of Hartford v. Yaw, 53 F. (2d) 684 (N. Y., 1931).

[40] Supra note 16.

jurisdiction. The applicant in such a case will enjoy the benefit of the greater power of the court under the Interpleader Act of 1936, if he pleads his case under (e), as will be seen in the next topic hereof.

Interpleader as a Defense at Law

Since the Federal Conformity Act does not apply to equitable forms and proceedings, which follow equity principles unless modified by Acts of Congress or Rules of Court, it has generally been thought that state statutes permitting equitable defenses in actions at law do not aid the defendant in a Federal court who wishes to interplead.[41] And even under Section 274b of the Judicial Code permitting equitable defenses in actions at law the court in *Sherman National Bank* v. *Shubert Theatrical Company*[42] refused to allow interpleader by way of defense despite respectable authority to the contrary.[43] However, in *Liberty Oil Company* v. *Condon National Bank*[44] the Supreme Court permitted the interposition as a defense in an action at law of an answer which presented a claim for interpleader.

By section (e) of the 1936 act it is expressly provided that any defendant in an action at law in a district court may "set up by way of equitable defense in accordance with section 274b" any matter which would entitle such person to file an original or ancillary bill and the court shall have the powers conferred in the other sections of the act. Aside from the implied approval of the Liberty Oil Company case, removing all doubt as to the propriety of interpleading in a law action, section (e) suggests the possibility of obtaining relief under the act in situations where an original bill could not be framed thereunder.

The Federal courts have general equitable jurisdiction

[41] Chafee, "Interpleader in the United States Courts," 42 Yale L. J. 41, 45 (1932).
[42] 247 F. 256 (C. C. A. 2d, 1917).
[43] See Chafee, supra note 8, cases cited p. 988.
[44] 260 U. S. 235, 67 L. Ed. 232 (1922).

of a bill of interpleader regardless of the presence of the requisite diversity of citizenship where such bill is ancillary to a cause pending therein;[45] the bill may be ancillary to the proceeding at law on the theory that the interpleader comes within the court's jurisdiction over its own process and record.[46] Thus, where an Illinois stakeholder is sued in the district court in Illinois by one of two New York claimants, he may be allowed to interplead under the act.[47] An alternative theory supporting interpleader as a defense in such a case is found regarding the defense as a matter which would entitle the applicant to interpleader in an original suit framed under the ruling in the Turman Oil Company case. The fact that in such a case he might have interpleaded in the New York courts or in the Federal court in New York does not render this opportunity unimportant, for there is substantial advantage in the simpler method of litigation at home in the initial suit with the protection of the greater power of the Federal court under the act.

VENUE

Under the act, suits "may be brought in the district court of the district in which one or more of such claimants resides or reside." This represents a vast simplification of the detailed venue provision of the 1917 act as amended in 1926,[48] which caused needless litigation and was finally tacitly shelved in favor of a construction similar to the express words of the present provision.[49] The use of the word "may" makes the provision one regulating venue rather than jurisdiction, which may thus be waived by the parties.[50] Opportunity may be

[45] Dobie, supra note 19, § 84.

[46] Sherman National Bank v. Shubert Theatrical Co., supra note 42.

[47] This procedure has been suggested by the framers of the act. See Senate Rep. No. 558 on S. 1277, 74th Congress, 1st Sess.

[48] U. S. C. A., Tit. 28, § 41 (26).

[49] Kansas City Life Insurance Co. v. Adamson, 24 F. (2d) 107 (D. C. Tex., (1928); Bankers' Life Co. v. Ebbert, 48 F. (2d) 907 (D. Pa., 1928).

[50] Commercial Casualty Co. v. Consolidated Stone Co., 278 U. S. 177, 73 L. Ed. 252 (1929).

afforded for the relief of hardship to a distant claimant through the exercise of discretion in entertaining suits admittedly within the jurisdiction of the court. As has been previously suggested, a California claimant cannot have compulsory attendance of his witnesses in New Jersey and great hardship may result if he were required to interplead there, while circumstances might be such that it would entail little trouble for the New Jersey claimant to go to California. If the New Jersey court may decline to hear the case, it may be possible to avoid injustice by sending the parties to a more convenient forum. This course has been followed in other types of litigation.[51]

The most usual basis for refusing to entertain the suit has been an alleged burden on interstate commerce through litigation vexatiously brought in an appropriate forum, though in *Canada Malting Company* v. *Paterson Steamships*[52] the court refused to exercise jurisdiction on the broader ground of fairness to the best interests of the parties. Mr. Justice Brandeis there said, "Obviously, the proposition that a court having jurisdiction must exercise it is not universally true . . . courts of equity and of law also occasionally decline, in the interest of justice, to exercise jurisdiction, where the suit is between aliens and citizens or non-residents, or where for kindred reasons the litigation can more appropriately be conducted in a foreign tribunal." Such an administration under the present act has been counseled also by Professor Chafee, whose work in this connection has been outstanding.[53]

Equity Jurisprudence

The principal function of the act is plainly jurisdictional; it provides for relief by interpleader in situations

[51] Consult J. Dainow, "The Inappropriate Forum," 29 Ill. L. Rev. 867 (1935).
[52] 285 U. S. 413, 76 L. Ed. 523 (1932).
[53] Chafee, supra, note 6, p. 984.

not formerly within the jurisdiction of the Federal courts but does not substantially affect the nature of the remedy as previously administered. Certain provisions, however, have some significance in this respect.

The act includes not only suits begun by the so-called "strict" bill of interpleader but also suits commenced with a bill "in the nature of a bill of interpleader." Such bills are familiar to equity jurisprudence where there is some other special ground for equitable relief in addition to the double vexation, such as fraud or the administration of a trust. Their principal importance lies in the fact that relief may be had thereunder despite interest in the disputed fund on the part of the applicant, which interest would bar a strict bill.[54] By including them in the act it was sought to avoid possible confusion of the two types with consequent narrowing of jurisdiction.[55]

Bills otherwise meritorious have often met defeat in the state courts because of a rigid formal requirement of privity among claimants, the theory being that to permit a bill where one claimant sues under a paramount title would be to assume the right to a court of equity to try mere legal titles. Another requisite which served to defeat the just administration of interpleader was the requirement that all claimants assert a right to the same identical fund or res. This requirement was apparently a misconception of the more flexible and more reasonable requirement that the claims be mutually exclusive, that is, that the success of one claimant involves the defeat of all the others. As has been pointed out, the act contemplates cases wherein the claimants seek not the identical thing, but different dispositions of the disputed policy or debt. To forestall any possibility of adoption by Federal judges of the above rules prevailing in the states in which they sit,[56] the act provides that the suit may be had

[54] Chafee, supra, note 2, p. 839; Chafee, supra, note 8, p. 970.

[55] Supra, note 48.

[56] Supra, note 48; Chafee, supra, note 8, p. 828.

although the "claims do not have a common origin, or are not identical. . . ."

Double Taxation and the 1936 Act

The recent case of *Worcester County Trust Company* v. *Long*[57] illustrates the usefulness and breadth of scope of the act of 1936. The complainant in that case was the executor of an estate which included intangible personal property located both in California and in Massachusetts. The will had been admitted to probate in Massachusetts and ancillary proceedings instituted in California; each state asserted a right to assess inheritance taxes based on the contention that the testator had died domiciled therein. The executor was thus faced with the dilemma of the executor for the Dorrance Estate who was finally obliged to pay both Pennsylvania and New Jersey inheritance taxes, assessed upon a similar basis. In that case each state exercised for itself the right to decide the jurisdictional question of domicile, and every attempt to force a consistent solution upon them was in vain.[58] To escape a similar outcome the executor in the Worcester County Trust Company case filed a bill of interpleader framed under the 1936 act, interpleading the tax authorities of Massachusetts and California. The court held that such a proceeding was not repugnant to the Eleventh Amendment prohibiting Federal jurisdiction of a suit against a state. It further held that the obligation to pay taxes was an obligation within the meaning of the Interpleader Statute and that the executor was entitled to interplead as he did. Thus, the possibility of double taxation was avoided by determining once and for all the question of domicile in a single proceeding.[59]

[57] Supra, note 37.

[58] In re Dorrance's Estate, 309 Pa. 151, 163 A. 303 (1932); Hill v. Martin, 12 F. Supp. 746 (1935), affirmed, 296 U. S. 393, 80 L. Ed. 293 (1935).

[59] See case notes 15 Chicago-Kent Review 41 (1936) and 31 Ill. L. Rev. (1936). The course followed by the executor in the Worcester County Trust Company Case may have been suggested by Professor Chafee's article in 45 Yale L. J. 1161 (1936).

Certiorari was denied[60] by the Supreme Court, but on March 15, 1937, the Circuit Court of Appeals for the First Circuit handed down an opinion[61] reversing the decision of the District Court. The Circuit Court held that as long as the state tax statutes were constitutional and as long as the tax officials were not violating the respective laws of their states, the tax officials were acting in their official capacity and, therefore, that the proceeding was, in effect, one in which the states themselves had been interpleaded. Despite ample case material to support an argument and decision upholding the view of the District Court,[62] the court thought this bill within the prohibition of the Eleventh Amendment. The case is plainly one within the broad purposes of the Interpleader Statute; for it involves an illegal double recovery which is made possible only by the inconsistent findings of fact-finding bodies in two states. Therefore, to include it within the constitutional scope of the Interpleader Statutes would seem desirable. And there seems to be no contrary practical disadvantage in construing the Eleventh Amendment to permit such suit. It is predicted by the writer that future bills of a similar nature in other jurisdictions will fare better and that this decision will not stand.

[60] Riley v. Worcester County Trust Co., 57 S. Ct. 29, 81 L. Ed. 34 (October 12, 1936).

[61] Riley, Controller of Calif. v. Worcester County Trust Co., 89 F. (2d) 59 (1937).

[62] See case notes, supra note 59.